



Energy Lawyers and Contracting Officers Group – GovEnergy 2009

- Rebates and Incentives Best Practices
- Power Purchase Agreements
- New Topics for Discussion



New Topics Discussion

- **Have any legal or CO issues ever come up in your energy projects?**
- **What are the roadblocks in getting a project going?**
- **What issues/topics would you like this working group to tackle?**



Legislative Initiatives Subgroup

- Legislative Initiatives subgroup could take on items that need to be resolved through legislative fixes. Need to funnel legislative suggestions to Scott Richlen at FEMP HQ.



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Indemnification Language in Interconnect Agreements

- Interconnect agreements for net metering contain indemnification language that is difficult for some agencies to agree to. May need legislative fix.
- Indemnification clauses are also being added to other types of energy projects. Also seen in service agreements. May consider working with EEI on this topic. DOD/EEI working group.
- Substituting tort claims has worked for some agencies, but it's on a case-by-case basis. Federal Tort Claims and Contract Disputes Act language has helped.
- If we come up with different language, it might have to be approved by PUCs across the country for approval. NARUC – National Association of Regulated Utility Commissioners should be involved. FERC could be involved also.
- You are covered by the FAR, Part 41 – depending on how you define utility agreement. Might want to look at the FAR clause as another way to deal with this.
- Interconnection Renewable Energy Council?



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Color of Money

- Color of money issue on metering project – can't mix milcon and O&M funds.



Renewable Energy Project Development Toolkit

- Needed: Renewable energy project development toolkit. What are the considerations that you need to think about? Documents needed, list of things to consider needed, etc. Could likely do this through FEMP & Anne Crawley's renewable energy working group.



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International Projects

- Sales taxes and other taxes on utilities and with ESPCs. Could take a legislative fix. US versus Washington State. & US versus Massachusetts. Duties and import taxes are issues in international projects. Materials and parts supplies being shipped to foreign countries raises other issues.
- International alternative financing for federal sites overseas. Like to identify challenges and hurdles for these projects. Building ownership is sometimes a problem. May need legislative fix on federal leased properties. Status of Forces Agreements is a good place to start. Need to liaison with the JAG institutions. Standard language for dealing with exchange rates is needed. Can you work with utilities in foreign countries? Do they have the authority to do UESC?



Improving Financing Rates

- Getting better rates on financing for energy projects. Could the market be broader? More financiers involved? Financier needs to know they will get paid.



Small business subcontracting plans

- Utilities have problems with GSA on small business sub-contracting plans. Need to go to UESC.



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Buy America

- Many items are coming from other countries. Need^{some} help here. Need list of components that are foreign manufacturer only. And raw materials are a concern these days as well.
- UESC enabling documents contains help for this. We'll make that more available.



Timing of Incentive Programs and Federal Projects

- Timing on California incentive program rushed a project. The timing of the utility application process doesn't mesh well with the timing of federal energy projects. Some utilities are willing to hold funds for federal agency projects until the project is up and running. Utilities time the rebates to make the best use of the funds.



List of Topics

- Legislative Initiatives Subgroup
- Indemnification Language in Inter-Agency Agreements
- Color of Money
- Renewable Energy Project Development Toolkit
- International Projects
- Improving Financing Rates
- Small Business Subcontracts
- Buy America
- Timing of Incentives and Federal Projects